



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE
TECHNICAL INFORMATION MEMORANDUM 86-8

November 21, 1986

SUBJECT: TOBACCO PRODUCTS TAX REGULATIONS

1. Regulatory Statement. These regulations establish an alternative system not employing tax stamps for collection of the tobacco product tax on all tobacco products other than cigarettes. This alternative system is based upon self-assessment and certain reporting requirements. The intent of these regulations is to require in general each resident distributor and each non-resident distributor, either of whom deals directly with the manufacturer of tobacco products, to report and pay the tax on those products purchased from the manufacturer for sale in this state, or for shipment into this state for resale at either wholesale or retail.

These regulations make parts of the statutory scheme relating to stamps, stamp affixing, and cancellation inapplicable to tobacco products other than cigarettes. See, e.g., 30 Del. C. §5315, §5316, §5317 and §5318. To the extent the statutory provisions of Chapter 53 do not conflict with these regulations and the alternative non-stamp, self-assessment and reporting system adopted herein, they are, of course, applicable and in full force and effect.

2. Authority. These regulations are promulgated pursuant to the authority granted the Department of Finance in 30 Del. C. §5319.

3. Definitions

3-1 Other Tobacco Products. "Tobacco products" for purposes of these regulations means all products containing tobacco for personal consumption including, but not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco and their substitutes, and snuff, but does not include cigarettes as defined in 30 Del. C. §5301 (2).

3-2 Distributor. "Distributor" is defined in 30 Del. C. §5301 (17). Under sub-paragraph (1) of that definition, a person is a distributor within the meaning of that section whether or not he maintains a "place of business" in this state as defined in 30 Del. C. §5301 (7). Under sub-paragraph (2) of the definition, out of state manufacturers are excluded from the definition of "distributors". Only non-residents without a "place of business" in this state, as that term is defined in 30 Del. C. §5301 (7), are included in the definition of "distributor" contained in sub-paragraph (3) of 30 Del. C. §5301(17).

A resident distributor is a person who maintains a "place of business" in this state as defined in 30 Del. C. §5301 (7).

A non-resident distributor is a person who does not maintain a place of business in this state and excludes out of state manufacturers.

3-3 Manufacturer. "Manufacturer" means any person who manufactures tobacco products from raw tobacco of whatever kind or quality for sale.

3-4 Wholesale price. The tax imposed on the sale or use of tobacco products other than cigarettes in this state is 30% of the wholesale price on such product. See 30 Del. C. §5305 (b). "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a distributor exclusive of any discount, rebate, or other reduction.

3-5 Determination of "Wholesale Price". In the unlikely event that a distributor is unable to determine the "Wholesale Price" on which to calculate the tax, either because he is dealing with another distributor, not a manufacturer, or because of some special circumstances surrounding acquisition of the tobacco product (i.e., bankruptcy), the distributor shall calculate the wholesale price as if he had purchased the product directly from the manufacturer in the normal course of his business. If the distributor does not deal with the manufacturer and cannot otherwise ascertain the wholesale price, he may, within 3 days of acquisition, contact the Division of Revenue, who shall promptly supply the distributor with the wholesale price of such tobacco product.

4-1 Incidence and Liability. Pursuant to 30 Del. C. §5305 (b) there is a tax imposed on the sale or use of tobacco products other than cigarettes within this State at the rate of 30% of the wholesale price of such product. Pursuant to 30 Del. C. §5306 the tax shall be paid and reports shall be required by the first person who has possession of untaxed tobacco products in this State, as more fully set forth in paragraph 4-2.

4-2 Brings or causes to be brought into this state. As stated in 30 Del. C. §5305 (b) the tobacco products tax shall apply only once to the same package or container of tobacco product. The tax is applicable to the resident distributor who deals with the manufacturer directly and then sells the product in this state and to the non-resident distributor who brings or causes the product to be brought into this state for resale at either wholesale or retail. Additionally, the tax is applicable to a resident distributor who deals with a non-resident distributor when the latter has not made provision for payment of the tax. See 30 Del. C. §5305 (b). In the latter case, the resident distributor may determine his liability or lack thereof by following the procedure set forth in paragraph 4-4. A distributor is in possession of tobacco products within the meaning of 30 Del. C. §5306 and these regulations when, being a resident distributor, he purchases tobacco products and causes them to be brought into this state from without this state. A distributor is in possession of tobacco products within the meaning of 30 Del. C. §5306 when, being a non-resident distributor, he sells to a resident distributor or retail dealer with a place of business in this state and causes the tobacco products to be physically delivered within this state by any means whatsoever.

4-3 "Person" as used herein means any distributor of tobacco products as those terms are defined herein [irrespective of whether such person is in fact licensed as required by 30 Del. C. §5307 and irrespective of whether such person is a wholesale dealer under 30 Del. C. §5301 (14) or a retail dealer as defined in §5301 (8)].

4-4 Certificate of payment. No person shall have in his possession within this state 10 or more packages of tobacco products upon which the Delaware Tobacco Product tax has not been paid. The law provides that untaxed tobacco products may be seized pending a forfeiture decision. A conviction for such a violation works an automatic forfeiture. See 30 Del. C. §5342, 5351, and 5354. Any person including a purchasing distributor, wholesale dealer or retailer may request from his seller and shall have the right to rely upon a certificate, a shipping invoice, bill of lading, delivery receipt or any other document given in the normal course of the distributor's business stating that the tax required to be paid on the particular tobacco product has in fact been paid. The certificate or other documents must be dated and state specifically the amount and type of tobacco products covered and be signed by a responsible person, authorized to make such a representation. The Division of Revenue will publish a certificate setting forth such information. The Division's form of certificate may be used in lieu of certification on a seller's document.

4-5 Distributor's liability. Any distributor who has failed to obtain a certificate or other document provided for in paragraph 4-4 from a distributor with whom he deals, and who takes physical delivery of tobacco products in this state is liable for the tax imposed on the tobacco products received as if he had dealt directly with the manufacturer. In the event that he cannot determine the wholesale price thereon, he may follow the procedure outlined in paragraph 3-6 in order to properly pay the tax.

The proper application of these regulations may be demonstrated by the following examples:

No. 1 - Distributor A, a non-resident distributor, purchases tobacco products from an out-of-state manufacturer and sells them to a resident Distributor B who resells them to Retail Dealer C. Distributor A, as he has sold them in this state and caused them to be brought, shipped into, and physically delivered in this state is responsible for the tax. Distributor B may protect himself from responsibility for the tax by obtaining a certificate from Distributor A. Retailer C may obtain a certificate from Distributor B and avoid liability for the tax.

No. 2 - Distributor A, a non-resident distributor, purchases tobacco products from an out-of-state manufacturer and sells them to a non-resident Distributor B who resells them to a resident Retailer C. Distributor B, as he has sold them in this state and caused them to be brought, shipped into, and physically delivered in this state, is responsible for the tax. He may compute the tax based upon the manufacturer's established price to Distributor A, and, if he cannot ascertain that price, he may treat the price as the established price that B pays the manufacturer for the same product. If he does not deal with the manufacturer, he may apply to the Division of Revenue who will notify him of the price. Retailer C may obtain a certificate from Distributor B and avoid liability for the tax.

No. 3 - Distributor A, a resident distributor, purchases tobacco products from an out-of-state manufacturer and resells them to Resident Distributor B, who sells them to Retailer C. As Distributor A has caused the tobacco product to be brought, shipped into and physically delivered to the state by purchasing them from an out-of-state manufacturer who is not subject to the tax, and is responsible for the tax. Distributor B may protect himself from responsibility for the tax by obtaining a certificate from Distributor A. Retailer C may obtain a certificate from Distributor B and avoid liability for tax.

No. 4 - Distributor A, a non-resident distributor purchases tobacco products from an out-of-state manufacturer and resells them to Resident Retailer C. Distributor A, as he has sold them in this state and caused them to be brought, shipped into, and physically delivered into this state is responsible for the tax. Retailer C may obtain a certificate and avoid liability for the tax.

4-6 Licensing. Nothing in these regulations shall be construed so as to negate the licensing requirement of 30 Del. C. §5307.

5. Sample Tobacco Products. Sample tobacco products distributed in this state by manufacturers must be reported to the Division of Revenue and the tax must be paid thereon as if they had been acquired for sale by a distributor.

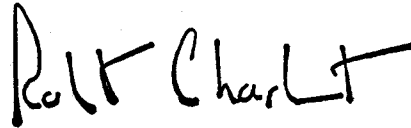
6. Payment of Tax. The tax imposed under these regulations is required to be remitted on or before the 20th day of the month following the month in which the tobacco products tax accrues.

7-1 Resident Reports Required. On or before the 20th day of each month, each distributor with a place of business in this State shall file, on forms provided by the Division of Revenue, a return with the Division of Revenue showing wholesale price of each tobacco product: (1) brought or caused to be brought into the state for sale, and (2) made, manufactured, or fabricated in the state for sale in the state during the preceding calendar month.

7-2 Non-Resident. Each distributor without a place of business in this state shall file on forms provided a return on or before the 20th day of each month with the Division of Revenue showing wholesale price of each tobacco product shipped or transported to wholesale or retail dealers in this state during the preceding calendar month showing the name and address of each separate dealer.

8. Invoice/Certification. In addition to the information required by the form, each resident/non-resident distributor shall procure from its seller, itemized invoices for such tobacco products purchased. The invoices must be retained for a 3 year period from the date of purchase and made available to the Division of Revenue for examination, upon request. Both resident and non-resident distributors shall certify and include such certification within their reports that the correct quantity of tobacco products has been reported and the amount of tax imposed has been paid with their report.

9. Bonds. No bond shall be required of any tobacco products distributor.
10. Effective Date. These regulations shall be effective beginning March 1, 1987. The regulations were distributed to tobacco product dealers and made public before November 30, 1986.

A handwritten signature in black ink, appearing to read "Robert W. Chastant". The signature is stylized with a large "R" and a long horizontal stroke at the end.

Robert W. Chastant
Director of Revenue